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HUMAN RIGHTS COMMITTEE

Seventy-third session

SUMMARY RECORD OF THE 1965th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 19 October 2001, at 3 p.m.

Chairperson: Mr. KRETZMER
(Vice-Chairperson)

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In the absence of Mr. Bhagwati, Mr. Kretzmer (Vice-Chairperson) took the Chair

The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 5) (continued)

Second periodic report of Switzerland (continued) (CCPR/C/CH/98/2; CCPR/C/73/L/CH)

1. At the invitation of the Chairperson, the members of the delegation of Switzerland resumed their places at the Committee table.

2. Mr. KOLLER (Switzerland) said that there had been many developments in Switzerland during the period since the submission of the State party's second periodic report (CCPR/C/CH/98/2) in September 1998. He regretted the fact that the supplementary information covering that period had been provided too late for translation into English and Spanish for the benefit of non-French-speaking members of the Committee.

3. He pointed out that the Swiss cantons were entities based on the rule of law with their own legal system and a constitution providing for the separation of powers and for full legal protection. Each canton was bound, in addition, by federal and international law and was subject to the control of the Confederation.

4. Replying to the questions raised by members of the Committee at the previous meeting, he said that the purpose of the constitutional review commissioned by Parliament had not been to revise the entire Constitution but to bring it up to date, taking into account recent legislation and jurisprudence. Two issues had presented special problems: the relationship between domestic and international law, and how best to incorporate basic human rights. Thus, article 5 (1) of the Constitution stated that the law (which, according to the Federal Council's explanatory message, included public international law) constituted the basis and the limit of all State activity. But as international law was not homogeneous and, for example, private international law did not take precedence over the Constitution, article 5 (4) stated that the Confederation and the cantons "respected" international law, thus allowing for a measure of flexibility. It emerged clearly from the explanatory message, however, that fundamental rights were to be viewed as mandatory and binding.

5. An inductive approach had been adopted in drawing up the list of human rights to be protected by the Constitution. Account had been taken, inter alia, of the provisions of the Covenant, the European Convention on Human Rights and the jurisprudence of the Federal Court. The next step was to find a way of incorporating those rights in the Constitution. The wording of the various instruments could have been reproduced or paraphrased, but it had been decided instead to formulate a comprehensive list of basic rights. One Committee member had claimed to find no mention of freedom of expression in the list, but he assured her that it had been included. He drew attention to article 36 concerning restrictions on basic rights, paragraph 4 of which made core rights non-derogable. The emergency legislation was to be interpreted in the light of chapter 1 of the Constitution, which contained the list of fundamental

rights that were binding on the Confederation, the cantons, Parliament, the Government and the courts within the limits laid down by the Constitution, international treaties and jurisprudence. Competence to assess whether certain acts violated fundamental rights and to quash certain decisions lay with the Federal Court and, at a higher level, the European Court of Human Rights.

6. Mr. BOILLAT (Switzerland), referring to Switzerland's reservations to article 14, paragraphs 1 and 3, and article 26 of the Covenant, said that the Government, by virtue of its commitment to full compliance with international law, did not ratify an instrument unless it was convinced that domestic law was compatible with its provisions. A similar approach was adopted to the withdrawal of reservations. The previous year Switzerland had withdrawn its reservation to article 6 of the European Convention on Human Rights, which bore some resemblance to article 14, paragraphs 1 and 3, of the Covenant, and was now looking into the possibility of withdrawing its reservation to the Covenant article. It was also looking closely at the Committee's jurisprudence and still had some doubts about the compatibility of Swiss law with the Covenant interpretation of the civil rights and obligations of public officials. However, there was every likelihood that the reservation would be withdrawn in the near future.

7. With regard to the reservation to article 26, he said that Switzerland had not entered a reservation to article 14 the European Convention on Human Rights because it provided for non-discrimination only in respect of the rights and freedoms enshrined in the Convention. It was therefore equivalent to article 2 of the Covenant, to which no reservation had been entered. But some doubts persisted with regard to article 26. He was pleased to report, however, that the Government had commissioned a wide-ranging study by various ministerial departments to establish whether the legal system, also at cantonal level, covered all forms of discrimination, the ultimate aim being not only to withdraw Switzerland's reservation to article 26 but also to ratify Protocol No. 12 to the Convention, which provided for a general prohibition of discrimination, the Optional Protocol to the Covenant and the Optional Protocol to the Convention on the Elimination of Discrimination against Women.

8. All 34 individual complaints against Switzerland under article 22 of the Convention against Torture had been submitted by asylum-seekers who claimed they might be subjected to torture or other cruel, inhuman or degrading treatment if returned to their countries.

9. With regard to the allegation that Switzerland lacked human-rights monitoring machinery, he said that the cantonal courts and the Federal Court paid scrupulous attention to human rights issues and that Switzerland systematically complied with the decisions of the European Court of Human Rights and submitted reports to the United Nations and Council of Europe monitoring bodies. There was admittedly no central authority such as the French human rights commission. One reason for the continuing reluctance to establish such a body was the existence in Switzerland of a system of semi-direct democracy. A central authority would also be difficult to operate within the Swiss judicial system and the federal system of government. Many ministerial departments within the federal administration dealt with human rights issues from the standpoint of their own field of specialization. As the questions asked by international human rights treaty monitoring bodies were becoming increasingly technical, the Federal Council had taken steps to ensure that every jurist who drafted legislation and every civil servant who applied the law was familiar with human rights requirements. There was thus a high degree of synergy between domestic and international law. A group dealing with international human

rights policy had been established within the Ministry of Foreign Affairs to coordinate all such activities. At all events, the Federal Council remained open to change and was looking into the possibility of introducing an office of ombudsman, either for general complaints or for complaints relating specifically to human rights.

10. Ms. SAMBUC (Switzerland) said that there was no overall authority responsible for addressing racism in Switzerland, chiefly because, until recently, there had been little public awareness of the problem in a country without a colonial history. Awareness had increased, however, since the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination, the establishment of the Federal Commission against Racism and the adoption of article 261 bis of the Criminal Code.

11. The Federal Council had set up the Commission as an extra-parliamentary advisory body representing civil society, religious communities, employers' associations and other bodies. Its members were appointed by the Council and it was viewed as a national institution although it did not meet all the criteria laid down in the "Paris principles". The Swiss delegation to the World Conference against Racism in Durban had supported steps to ensure that national institutions, where they existed, fully respected the principles. The Commission was located within the Federal Department of Home Affairs, but its relationship with the Department was largely administrative and it enjoyed considerable independence of action. A constructive dialogue on racism was conducted with all ministerial departments, particularly the federal commissions on aliens and foreigners. The advisory status of the Federal Commission against Racism was, of course, a disadvantage since it could not, for example, institute legal proceedings on behalf of victims or associations. But it was free to take up any problems of which it was aware, even in the absence of a complaint. It had prepared a report, for example, criticizing the "three circles" policy, which had subsequently been modified by the Confederation. Two members of the Commission carried out "ombudsman" functions but the situation was unsatisfactory owing to the shortage of staff and financial resources.

12. The World Conference against Racism had drawn attention to new forms of racism throughout the world, a trend that had given rise to a political debate in Switzerland. Part of the population still tended to be somewhat suspicious of foreigners and a major effort was needed to tackle racism against, for example, asylum-seekers, refugees and illegal immigrants in order to ensure the effective defence of victims' rights and to integrate vulnerable groups, especially coloured people and Muslims, into Swiss society.

13. The Commission was seriously concerned about racist attitudes to immigrants. Studies of discriminatory practices in the area of naturalization had been undertaken in coordination with various departments, and welcome initiatives had been taken aimed at the enactment of legislation to address the problem. The risk of abuse of direct democracy for the purpose of discrimination against a particular group was being carefully examined. The Commission was also studying the criteria governing non-admission of immigrants from outside the European Union and the European Free Trade Association (EFTA). It was very difficult in a federal system to keep pace with judicial decisions; some 200 had been adopted under article 211 bis of the Criminal Code to date. A major shortcoming of the article was that it applied only to discrimination in the public sector. It was therefore essential to extend the legislation in the near future to cover discrimination in the private sector.

14. Ms. SCHULZ (Switzerland) said that the Government had adopted a pragmatic approach to the implementation of the Plan of Action for Equality between Men and Women, which was not an easy task. The Plan of Action was non-binding and, like the Beijing Platform for Action, divided into 12 chapters. It was targeted not only at the federal executive and legislature but also at the private sector, the media, employers and associations. A progress report was being prepared on implementation at the federal level. Preliminary results indicated that, while some authorities were lagging behind, others had implemented the Plan of Action in their fields of competence. She thought that criticism by NGOs was somewhat exaggerated, partly because the authorities often made no explicit reference to the Plan of Action when implementing recommended measures such as those concerning access to universities, institutes of higher education and vocational schools, prevention of sexual harassment and tax relief in respect of childcare expenses.

15. With regard to action to increase the number of women in positions of responsibility, the Confederation, in its capacity as an employer, had decided to increase the proportion of women in the higher echelons of the civil service by 5 per cent during the period 2000-2003. A further aim was to double the number of women on the teaching staff of Swiss universities. Although there was limited scope for action in the private sector, practical instruments for the promotion of non-discriminatory employment practices, covering recruitment, benefits and career advancement, had been made available to private companies.

16. Mr. SCHURMANN (Switzerland) said that the preliminary draft Federal Code of Criminal Procedure had been framed by an Emeritus Professor of Zurich University in the light of the work of a group of experts of the Federal Administration. Once the consultative procedure was completed in February 2002, the Federal Council would study the draft Code with a view to its adoption. He was confident of its entry into force prior to Switzerland's submission of its third periodic report to the Committee. Separate cantonal and federal codes were currently applied. The cantonal codes, especially the older ones, were somewhat unsatisfactory. But federal and international judicial safeguards were nonetheless applied without restriction. For example, the right of an arrested person to contact family members was guaranteed even where the cantonal code of criminal procedure contained no such provision.

17. With regard to the central role of the Office of the Public Prosecutor and a possible reform of criminal investigation procedures, there were currently two systems in Switzerland. Proceedings in the cantons, except for Basel-City and Ticino, were conducted basically by an investigating judge. The preliminary draft Federal Code of Criminal Procedure proposed doing away with investigating judges, because there were objective grounds for considering that they operated as a prosecuting authority rather than a judicial authority. In the new model for the majority of cantons, the Office of the Public Prosecutor was counterbalanced by a number of innovations, the most important of which was the juge de la liberté (a judge with responsibility for assessing the lawfulness of pre-trial detention and all other coercive measures). In addition, serious consideration was being given to the possibility of allowing defence counsel to intervene at an earlier stage of judicial proceedings. A recent Federal Court decision had described the new regulations in force in the Canton of Geneva, under which counsel was given access to an arrested person after preliminary police questioning and not more than 24 hours after arrest, as balanced and innovative. The preliminary draft Federal Code of Criminal Procedure went even further, since it guaranteed access to counsel from the very beginning of police custody.

18. Although setting no specific limits for pre-trial detention, the draft Code, like the existing one, provided for three sets of circumstances in which detention could be terminated: the existence of substitution measures having the same objective; failure of the authorities to exercise due diligence despite the existence of appropriate grounds; and proximity of the pre-trial detention period to the length of sentence envisaged. He would provide the Committee with the statistics requested by Mr. Ando on those points. Finally, in reply to a question put by Sir Nigel Rodley, he said that under the draft Code an arrested person must be brought before a judge or other duly appointed magistrate within 24 hours.

19. Mr. ARNOLD (Switzerland), referring to the two expulsions with tragic consequences mentioned by Ms. Chanet, said that in the Abuzarifa case the Zurich Cantonal Court had found the physician involved guilty of negligence, for which he had been sentenced. Two of the three policemen involved had been cleared of all charges, but the senior officer was awaiting trial, having been requested to submit further evidence. In the Chukwu case, the Cantonal Court of Valais had rejected the complaint on the grounds that the police had followed cantonal guidelines. The private lawyer involved had filed an appeal, which was still pending.

20. Mr. KOLLER (Switzerland), in reply to questions put by Mr. Ando, said that conscientious objectors had the option of performing civil or community service instead of military service. However, no group was exempt per se, and a special commission examined every application on its merits. With regard to the alleged use of dumdum bullets by the Swiss police, he replied that, in accordance with the international conventions to which Switzerland was a party, the Government had not authorized the use of such ammunition by its police forces. However, during the incidents in question the police had fired the kind of plastic bullets widely used elsewhere to protect the public from violence.

21. Ms. CHANET asked what general measures had been introduced to prevent a reoccurrence of the tragic consequences which had marked the two cases just mentioned by Mr. Arnold. On the question whether article 36 of the Constitution was in conflict with the Covenant, she did not consider that the article provided a sufficiently broad interpretation of the principle of proportionality to prevent the occurrence of problems in cases of particular difficulty; it was not enough simply to state that fundamental human rights were inviolable.

22. Mr. KOLLER (Switzerland) agreed that the matter had not been resolved. However, in general the Swiss authorities considered that fundamental rights were best preserved if the Constitution remained abstract on the matter, with a judge deciding on circumstances and proportionality in particular cases.

23. Replying to question 11, he said that a deportee who categorically refused to leave Switzerland could be taken to the airport by the cantonal police, and escorted during the flight if necessary. Repatriation under escort was done only by the cantonal police, who were permitted to use reasonable restraint, such as handcuffs. A task force named "Passagier 2", comprising representatives of the cantonal and federal police forces, the Federal Office for Refugees and the Federal Aliens Office, was currently discussing improvements to every stage of the process of arresting and repatriating deportees. Eventually, it was planned that only police officers who had undergone special training would be authorized to carry out expulsions. The final report of the task force was expected in 2002.

24. The Appeals Commission was a special administrative tribunal - impartial and independent - which gave rulings at second and final instance on all appeals against decisions made by the Federal Office for Refugees on matters involving asylum and repatriation. Established in 1992 and responsible to the Federal Council and Parliament, the Commission had five chambers, each of which comprised three judges and reached its own decisions. Headed by the President of the Commission, the "plenum" (the five courts taken together) essentially determined the Commission's practice and changes of jurisprudence, which then became applicable to the Federal Office for Refugees. Appeals must be lodged within 30 days of notification of the decision of first instance, or 10 days in the case of an incidental decision or preventive return to a third State. In the case of immediate return, requests for restitution of suspensive effect must be submitted within 24 hours of notification of the decision. In general, the Commission's affairs were conducted in writing. The examining judge could order various investigative measures and arrange for hearings of witnesses and the parties. Exceptionally, the Commission could refer the case to the lower authority for a new decision.

25. In reply to question 12, he said it was unfortunate that the term still appeared in three cantonal codes of criminal procedure; it referred to a draconian measure, involving total isolation of the prisoner, which was now never used. He recalled that the Federal Office of Justice had informed the Committee of that fact, providing a full explanation of the situation, in 1996. As elsewhere in Switzerland, the three cantons in question applied only the restrictions permitted under the Covenant, the European Convention on Human Rights, the Federal Constitution and the relevant jurisprudence. In 1997, the Federal Court had cited the provisions of the Covenant in its ruling on the use of solitary confinement in prisons in the Canton of Basle-City. The draft Code of Criminal Procedure made no reference to incommunicado detention (mise au secret). Moreover, article 248 of the Code provided that the personal liberty of accused persons in detention must not be restricted beyond the level required for achieving the purpose of the detention and the order and security of the establishment, and that detainees must be allowed to communicate freely with their lawyers.

26. Turning to question 13, he said that the Government had received no information indicating that any canton had encountered difficulties in implementing the non-renewable 24-hour limit for detention in police custody as required by the blueprint for the unification of criminal procedure. With regard to the use of police premises for the purposes of remand or custody in excess of 24 hours, statistics dating from March 2001 showed that in all of Switzerland there were 6,815 places available for interim detention. The rate of occupancy at that time had been only 75 per cent. Thirty-two per cent of all those in temporary detention were housed in three facilities, while a further 50 per cent were kept in seven other establishments. Despite occasional press reports about temporary overcrowding in remand facilities, the situation had improved greatly in recent times, owing to the fact that one third of prison sentences were now carried out in the form of community service. The statistics showed that, during the 1990s, 14 per cent of persons convicted had been placed in interim detention, the average length of which had been 41 days, and half of the periods of detention had not exceeded 7 days.

27. In reply to question 14, he said that the new Asylum Act which had entered into force in October 1999 integrated into ordinary law the order on emergency measures applicable to asylum and foreigners which had been in force since 1 July 1998. Accordingly, all the information and explanations given in the report concerning coercive measures were still

relevant. Under the Federal Act on the Permanent and Temporary Residence of Foreigners, the Federal Department of Justice and Police was required to assist the cantons in obtaining the travel documents required for the return or expulsion of foreigners, and to coordinate arrangements between the cantons and the Federal Department of Foreign Affairs.

28. In 1999, the Department had established a Repatriation Division whose main areas of intervention concerned establishment of identity, contacts with foreign embassies and obtaining the necessary travel documents for persons awaiting refoulement. In 2001, a new federal service called "SwissREPAT" had been set up at Zurich airport with responsibility for advising cantonal authorities on all matters relating to travel arrangements for repatriated persons on flights from Switzerland. All the administrative and logistical support provided by the Confederation for cantonal authorities was designed to reduce the average length of detention prior to refoulement and to restrict the number of detentions that did not lead to eventual repatriation.

29. With regard to judicial review of the detention decision or its extension, he said that by law an initial compulsory review must be undertaken within 96 hours. Parliament considered that to be the minimum period for obtaining a well-founded judicial decision, given the fact that the proceedings were oral and often required the services of interpreters and lawyers. With regard to further judicial review following a request for release by the party concerned, the law granted the judicial authority a maximum of eight days. As to legal assistance for foreigners held in administrative custody, he said that the provisions on detention had been superseded by the entry into force of the Federal Act on Coercive Measures in 1995. It was now the Act on the Permanent and Temporary Residence of Foreigners that regulated administrative detention during the period prior to the decision on the right to remain and during the period prior to actual expulsion. Foreigners had the right to legal representation at their own expense from the start of their detention. Free legal assistance became available when a trial was held for the purpose of extending detention prior to expulsion, i.e. after three months. On the question of judicial review one month after a decision to detain a foreigner pending expulsion, in 1996 the Federal Court had ruled that free legal assistance must be granted if the case raised particular legal or practical difficulties.

30. Turning to question 15 (a), he said that under the new Asylum Act asylum-seekers were given 48 hours after filing their application to furnish their travel documents or other documents by which they could be identified. When there was evidence of persecution which was plainly not unfounded, or if the applicant was able to adduce other plausible grounds, that provision was not applied. In practice, only plainly abusive applications were denied. The rule's apparent severity was attenuated to a large extent by the very broad interpretation allowed by the Appeals Commission. Furthermore, the Federal Office for Refugees, in accordance with its general rules on administrative procedure, was empowered to consider until the last moment any claims that might warrant non-refoulement.

31. When the Federal Office for Refugees refused an application for asylum, it normally informed the applicant that expulsion would take place within 24 hours and withdrew suspensive effect for a possible appeal. In practice, immediate execution of the expulsion was almost impossible since the new Asylum Act allowed the applicant 24 hours in which to submit a request to the Appeals Commission for the restoration of suspensive effect. The Commission then had a further 48 hours in which to take a decision. The Asylum Act explicitly provided that

the applicant must be informed of his rights, and the Appeals Commission was required to inform the competent cantonal authority immediately that such a request had been made. Execution of the expulsion was then immediately suspended under Asylum Directive 21 (2) of 20 September 1999.

32. In reply to question 15 (b), he said that the new Asylum Act did not impose a maximum time limit for processing asylum applications. Instead, it set maximum time-frames for decisions by the authorities concerned at certain stages of the procedure. Thus, the cantonal authority had to hear a petition within 20 working days of the decision by the Federal Office for Refugees to allocate the applicant to a canton. Likewise, decisions not to deal with a case must be taken within 20 working days of submission of the application, and when an applicant was manifestly unable to demonstrate refugee status or reasonable possibility thereof, rejection of his application without further inquiry must take place within 20 days. The Appeals Commission was required to rule on appeals against such decisions within six weeks. All the time limits were intended to encourage the competent authorities to deal as soon as possible with applications that were clearly likely to be rejected. In the event of appeals against certain "incidental decisions", such as temporary refusal of entry into Switzerland and allocation of a place of stay at the airport, or withdrawal of suspensive effect in cases where immediate implementation of expulsion had been ordered, the Appeals Commission was required to take a decision within 48 hours.

33. With regard to the rights of the asylum-seeker and his family during the period in question, anyone who requested asylum in Switzerland had the right to remain there until expiry of the procedure. However, the Office for Refugees could send back the applicant if the continuation of his journey to a third State was possible and legal, and if such could reasonably be demanded of him. During the first three months following submission of a request for asylum, the applicant was not entitled to engage in gainful employment. If a negative decision was given at first instance before expiry of that time limit, the canton had the right to refuse such entitlement for a further three months. In the case of a positive decision, the applicant was permitted to engage in gainful employment after three months. If Switzerland rejected an asylum request by a mandatory decision, the authorization to engage in gainful employment ceased on expiry of the time limit set for the applicant to leave the country. For certain categories of person, and if circumstances justified such a course, the Confederation could authorize cantons to extend the period of access to gainful employment beyond the date of departure. Finally, applicants who were authorized to engage in gainful employment under police supervision or who participated in community work programmes were exempt from the statutory ban on working.

34. In 1999, the Federal Office for Refugees had handed down 6,693 non-consideration decisions, 27,143 negative decisions and 2,050 positive decisions. In the year 2000, the figures had been 5,292, 24,759 and 2,061, respectively. For the period January-September 2001, there had been 3,384 non-consideration decisions, 9,833 negative decisions and 1,743 positive decisions. The proportion of applications granted had thus risen from 5.7 per cent in 1999 to 6.4 per cent in 2000. For the first three quarters of 2001, the rate had been 11.7 per cent. The Appeals Commission had granted 7.4 per cent of the requests it had dealt with in 1999, and 6.4 per cent in 2000. In December 2000, 15,137 applications had been pending before the authority of first instance and 12,332 before the authority of second instance.

35. Turning to question 16, he said that there appeared to be some confusion. As to freedom of movement within Swiss territory, there was no difference between Swiss citizens and foreigners. He assumed, therefore, that the question was directed not at freedom of movement but rather at freedom of residence, which was clearly very different. The new Federal Constitution gave Swiss citizens, as in the past, the right to reside freely in any part of the country. Foreign nationals, on the other hand, did not enjoy that freedom. Under article 8 of the Federal Act on the Permanent and Temporary Residence of Foreigners, authorizations were valid only for the canton issuing them. A foreigner wishing to move to another canton needed to obtain a new authorization. It should be made clear, however that in practice foreign nationals holding a permanent residence permit were in principle authorized to move from one canton to another. Nevertheless, Switzerland had found it necessary to enter a reservation to article 12 of the Covenant concerning specifically that regulation relating to foreigners whereby authorizations of permanent and temporary residence were valid only for the issuing canton. Lastly, he drew attention to the fact that the aliens bill envisaged a certain relaxation of the legal system. Given Switzerland's federal structure, it was envisaged that the principle whereby an authorization was valid only for the canton issuing it should remain. Any change of canton, therefore, would need an authorization. However, the bill envisaged granting a person holding an authorization the right to change canton.

36. In regard to question 17, he said that the compatibility of denial of family reunification for seasonal workers with articles 17 and 23 of the Covenant arose from the way in which the Federal Court interpreted article 8 of the European Convention on Human Rights, the scope of which was very close to that of articles 17 and 23 of the Covenant, at least with respect to the concept of "family" and the problem of family reunification. For the right to family reunification to be invoked, the Federal Court required there to be a family relationship between the foreigner and a person having the right to reside in Switzerland - in other words, a person of Swiss nationality or one having a residence permit - or having a definite right to the granting or extension of a residence permit. The Federal Court's case law was consistent on that point. The European Court of Human Rights had confirmed that that interpretation and practice were well founded, given that Switzerland was not violating article 8 of the European Convention by refusing, for example, family reunification to a child whose parents had only an ordinary annual residence permit. Given that the status of seasonal worker was by definition temporary, such persons could not invoke any right to a family reunification in the sense of article 8 of the European Convention unless there were very special circumstances. Thus, in the view of his Government, the fact that Switzerland did not accept family reunification for that category of foreigners could not be regarded as incompatible with articles 17 and 23 of the Covenant.

37. Currently, seasonal worker status was granted only to nationals of the European Union and the European Free Trade Area (EFTA). It would very shortly be abolished for nationals of the European Union with the entry into force of the agreement between Switzerland and the European Union on the free movement of individuals and for EFTA nationals when that Convention was amended. Those agreements should enter into force in 2002. In addition, the new aliens bill, which would apply to the nationals of countries other than those that were members of the European Union or EFTA made no mention of the concept of a seasonal worker. It was envisaged that that status would be abolished, to be replaced by a short-stay status for a

maximum of one year, extendable to two years at most. Regarding family reunification, the holder of the permit could be authorized, for the period of his stay, to bring in his wife and unmarried children under 18 if they were still living at home.

38. In response to question 18, he said that the draft amendment to the Criminal Code would make it much easier to prosecute persons who had committed a sexual act with a child under 14 years of age abroad. It would be possible to institute such a prosecution in Switzerland even if the offence was not punishable under foreign law or if the foreign prosecution was subject to more restrictions than under Swiss law. In addition, the Federal Parliament had made it still easier to prosecute persons engaging in "sex tourism". Thus, the fact that the offender had not, at the time of the offence, been domiciled or customarily resident in Switzerland would no longer impede a criminal prosecution in Switzerland. In future, such offenders would not be able to escape prosecution in Switzerland unless they had been acquitted of the offence abroad by a final judgement. That amendment to the Criminal Code would probably enter into force during 2002. For the time being, he could not provide any details of the actual application of the procedure. He could report, however, that under the law in force the number of complaints registered by the cantonal police forces regarding sexual offences against children abroad had been one complaint in 1998, five in 1999 and eight in 2000.

39. On question 19, it was going too far to say that the Federal Constitution contained no provision parallel to article 27. The new article 8 of the Constitution was in perfect compliance with the spirit of article 27 of the Covenant because it provided that no one should be subjected to discrimination on grounds of origin, race, language, way of life or religious convictions. The provision also confirmed case law whereby the prohibition of such discrimination was not limited to Swiss citizens; foreign nationals could also take advantage of it.

40. The Federal Constitution contained a list of fundamental rights guaranteed to everyone. Thus, persons belonging to minorities enjoyed all the rights and freedoms guaranteed by the Constitution. Those fundamental rights could be directly invoked in law by everyone. Some of them, including the prohibition of discrimination of any kind (art. 8), freedom of conscience and belief (art. 15), freedom of opinion and information (art. 16), freedom of the press (art. 17), freedom of language (art. 18), freedom of assembly (art. 22), freedom of association (art. 23), freedom of residence (art. 24), protection against expulsion, expedition and refoulement (art. 25), the right of petition (art. 33) and political rights (art. 34), were particularly important to minorities. As far as religious minorities were concerned, he noted that the new article 15 of the Constitution was so formulated as to take into account the case law of the Federal Court and now emphasized the right of the individual to religious freedom.

41. There were several Swiss institutions designed to protect and develop the rights of persons belonging to linguistic, ethnic or religious minorities. Those institutions could act on their own behalf or at the request of the persons concerned. That was particularly the case of the Federal Commission against Racism. In that context, he would draw attention to the Foundation called "Ensuring the Future of Swiss Travellers", established in 1997 and mentioned in paragraph 242 of the report. The Foundation had been given an endowment of 1 million francs for five years. A second framework allocation had been submitted to Parliament by the Government for the years 2002-2006.

42. The Swiss Government also supported the association entitled "Radgenossenschaft der Landstrasse", which offered help of various kinds to travellers. A number of cantons and communes had made arrangements for transit and camping places so as to allow the travellers to continue their way of life. In addition, on 23 March 2001, the Federal Parliament had adopted a new act making it easier for travellers to exercise itinerant professions by eliminating the large number of cantonal regulations and standardizing charges. Lastly, he would note the entry into force for Switzerland, on 1 February 1999, of the Council of Europe's Framework Convention on the Protection of National Minorities.

43. Turning to the last question on the list of issues, he pointed out that the current meeting of the Committee had been the subject of a press release in German, French and Italian issued by the Federal Office of Justice. All the media had thus been informed of it. The Federal Administration had been using the Internet to disseminate information for several years. The second periodic report appeared on the site of the Federal Office of Justice and on that of the Directorate of International Law in the Federal Department of Foreign Affairs. It was available in four languages: French, German, Italian and English. Thus, anyone wishing to consult the second report could do so, and the same would be true of the Committee's comments on the report. Moreover, the competent government services were happy to send a copy of the report to anyone wishing to obtain it; such requests were in fact frequent.

44. Regarding consultations with civil society in preparing the report, he observed that, since the report was that of the Swiss Government, the Government was solely responsible for the content. The Government was, however, permanently in contact with civil society through NGOs and church organizations, among others. A number of government services and federal commissions were in regular contact with representatives of civil society and civil society was thus clearly in a position to influence the drafting and presentation of his Government's periodic reports.

45. He was not quite sure, what was meant by the term "judiciary" used in question 20 (b). If it meant the judges, the position was clear. Since the first report in 1995, the Federal Court had handed down more than 100 decisions regarding the rights and safeguards provided by the Covenant, thus demonstrating the importance attached to the Covenant by Swiss judges. In Switzerland, however, in various legal matters it was the cantons that were primarily responsible. The courts of first and second instance were always cantonal. He repeated, however, that the Covenant was directly applicable in Swiss law. It was systematically taught alongside other human rights instruments, in all Swiss law faculties. Although the police and prison staff were not, properly speaking, part of the judiciary, it should be noted that they also received training in human rights and in the implementation of the Covenant. Courses were also given to customs personnel and persons responsible for receiving asylum-seekers. One last revealing example of the impact of the Covenant on Switzerland was that when the cantons had been asked to reply to questions 9, 10 and 11 with a view to bringing the second periodic report up to date, all 26 cantons had replied, although they had been given very little time to do so. He believed that demonstrated the importance attached also by the cantons to the implementation of the Covenant in Switzerland.

46. Question 20 (c) was covered by what he had already said. He would merely recall that the Covenant was available on the Internet sites of the relevant federal departments in all the

official languages of the Confederation, that the administration answered citizens' questions regarding their rights, and that the media covered all decisions or comments on human rights matters that concerned Switzerland. He had already mentioned the programme for 2001-2005 proposed by the Government and ordered by Parliament to increase awareness among the Swiss, particularly children and teenagers, of human rights and action to combat racism and intolerance. He was sure that the programme, which would very probably be extended beyond 2005, would bear fruit.

47. Mr. BRAUN (Switzerland) said, in response to the questions about the integration of foreigners and the Federal Commission on Foreigners, that a new ordinance on integration had been adopted on 2 October 2000 setting out the aims of the Federal Government in that respect and the regulations that would govern the payment of the new federal integration subsidies. Some 10 million francs had been set aside for integration projects in the year 2000. On the question about illegal immigrants, he said that they were not a homogenous group. What they had in common was that they wished to stay in Switzerland for personal or economic reasons but were in fact able to return to their countries of origin. In most cases, they had never received a residence permit or else the permit had lapsed. They might have disappeared from sight for years or simply failed to leave at the appointed time. The Federal Council was opposed to a collective solution because of the disparities in the circumstances of the persons concerned. The solution adopted, therefore, was for Cantons to deal with individual cases.

48. Mr.KOLLER (Switzerland) said it had been agreed with the Chairperson that written answers would be given to the rest of the questions regarding foreigners.

49. Mr. RECHTSTEINER (Switzerland) said that the two cases of police questioning in Geneva raised at the previous meeting had not ended in tragedy. In the first, the public prosecutor had found the police to have acted properly. The detention in police custody, however, had been found to be unlawful. The second case, involving a 17-year-old, concerned a complaint of bodily harm caused in the course of questioning by the police. The decision rejecting the complaint had been appealed and was now before the court.

50. Mr. KLEIN congratulated the Swiss delegation on its valuable contribution to the discussion and expressed special pleasure at part III of the report, which contained written answers to the Committee's observations on the initial report. He had some further questions, however, regarding the Optional Protocol. He noted that Switzerland ratified international treaties only after first ensuring that domestic law was consistent with them. It had done so in the case of the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture. It would already seem to be in a position, therefore, to ratify the Optional Protocol since article 54 (2) of the new Constitution stated that the Confederation endeavoured to promote respect for human rights everywhere.

51. With regard to freedom of movement, he felt that the Swiss reservation to article 12 (1) of the Covenant could well be withdrawn in the light of the new Constitution which imposed restrictions only on the right to take up residence. Under article 24 (2) of the new Constitution, Swiss citizens had the right to leave and return to Switzerland. The Covenant, however, said that everyone had the right to leave a country. Switzerland's reservation to its article 12 (1), concerned only that part of the article. The Committee had learned from material provided by

NGOs, however, that some holders of a temporary permit, the so-called F permit, had difficulties leaving Switzerland. Could they not invoke article 12 (2), to which no reservation had been addressed? Furthermore, no reservation had been entered to article 24 (3), under which every child had the right to acquire a nationality. On ratifying the Convention on the Rights of the Child, however, Switzerland had made a reservation that seemed to exclude the automatic acquisition of Swiss nationality. What would the Swiss authorities do if confronted with a contradiction between those provisions? Under article 2 (1) all parties to the Covenant undertook to respect and ensure to all individuals subject to their jurisdiction the rights recognized in the Covenant.

52. Mr. SCHEININ said, with regard to non-refoulement, that article 21 (3) of the Constitution was silent on the question of capital punishment. Did capital punishment as such then constitute a reason for non-refoulement or would the decision depend on the particular circumstances of each case? Regarding asylum-seekers and deportation, he asked how article 3 of the Covenant was complied with if deportation took place directly at the airport. In what language were the reasons for expulsion given, and was the right to be represented before the review body preserved through effective access to a lawyer? Were female asylum-seekers who evoked gender-based persecution as grounds for asylum interviewed by female staff, and could such persecution by private actors be advanced as grounds for asylum if the State in question did not provide protection against it? Lastly, he asked whether Switzerland was considering abolishing the ban on Jewish and Islamic slaughtering practices.

53. Mr. SOLARI YRIGOYEN expressed appreciation for the efforts the delegation had made to respond to the Committee's concerns. He was pleased to note the enormous difference between the previous report and the current one, and the great progress made by Switzerland in the matter of legislation to protect human rights. However, he noted that, while liberty of movement was guaranteed by law to all, freedom to choose one's residence was guaranteed only to Swiss citizens and not to foreigners, and that Switzerland maintained its reservation to article 12 (1) of the Covenant. There was a considerable divergence between Swiss law and the provisions of the Covenant in that respect, and he urged that every effort should be made to close that gap and, if possible, remove the reservation.

54. Concerning the right of foreign workers to family reunification, it had been stated that that right was now granted following a 12-month waiting period. Could that period be reduced? It had also been stated that seasonal worker status was applicable only to workers from countries members of the European Union or EFTA. What would be the status of workers from other countries? The delegation had stated that, under draft legislation, family reunification permits were to be granted in the case of spouses and children under 18. He was concerned as to what the situation would be in the case of families with children over that age, and believed that more flexible criteria should be adopted.

55. Lastly, concerning article 18 of the Covenant, he noted that the Civilian Service Act had now been amended to allow more flexibility in dealing with applications for conscientious objector status. Was there a commission responsible for taking decisions in such cases, and what was the reason for the disparity between the length of military service and the length of civilian service?

56. Mr. GLELE AHANHANZO congratulated the delegation on the quality of its report and its dialogue with the Committee.

57. Concerning refoulement, he asked whether administrative detention centres for persons subject to refoulement existed, what were the conditions prevailing in such centres, and how long persons were detained there. He appreciated the efforts made to combat racial discrimination and anti-Semitism on the Internet. Was Switzerland also concerned at the problem of cybercrime, and how did it plan to combat it? Lastly, he wondered whether, as a member of the Committee, he himself would qualify as a seasonal worker, since in order to obtain a three-month visa he was required to provide full details of his financial situation and return travel arrangements.

58. Sir Nigel RODLEY said he would appreciate an answer to his earlier questions on the powers of the independent investigator into police complaints; how many complaints, and of what nature, had been received; and whether they had been followed by any disciplinary action or legal proceedings.

59. Mr. RECHTSTEINER (Switzerland) said that for some years now an Ethics Commission had been in existence, with powers to investigate all cases of ill-treatment or use of force by police officers. The Ethics Commissioner made a monthly report to the head of the Department of Justice and Police stating whether there were any cases justifying a disciplinary inquiry. In the year 2000, there had been 736 reports of cases where force had been used.

60. Mr. BOILLAT (Switzerland), replying to Mr. Klein, said he did not see any contradiction between the fact that Switzerland had recognized individual communications under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the fact that it had not yet ratified the Optional Protocol to the Covenant. Whereas CERD related only to racial discrimination, the scope of the Covenant was far wider. However, the matter was currently under review.

61. Regarding article 12 (1) of the Covenant, he emphasized that there was no restriction on liberty of movement in Switzerland, either for Swiss citizens or for foreigners. The only restrictions related to choice of residence, since the power to issue residence permits lay with the cantons. Swiss citizens were not subject to any restrictions on leaving the country.

62. In reply to Mr. Scheinin, he said that in conformity with the principle of non-refoulement, Switzerland never extradited a person to a country where he or she might face torture or any kind of inhuman or degrading treatment. On the subject of cybercrime, he pointed out that Switzerland had been very active in drafting a Council of Europe convention on the subject, which was to be opened for signature in Budapest the following month. It was even envisaging taking part in the drafting of an additional protocol to that convention, designed to combat incitement to racism on the Internet.

63. Mr. KLEIN said that there appeared to have been some misunderstanding of his question. He had not suggested that there was no liberty of movement in Switzerland, either for nationals or foreigners. He had asked only whether Switzerland's reservation to article 12 (1) of the Covenant could be withdrawn. Nor had he suggested that there were any restrictions on the right

of Swiss nationals to leave the country: rather, he had asked if such restrictions applied to foreigners, and notably those who held an F permit. Lastly, he had not suggested that there was any contradiction between Switzerland's adherence to CERD and its adherence to the Covenant: he had simply recommended that it might follow the example of the former with regard to the latter.

64. Mr. BRAUN (Switzerland) said that, in the case of Mr. Glèlè Ahanhanzo, the question of a residence permit was not at issue since he was covered by a regime specific to the United Nations.

65. In reply to Mr Solari Yrigoyen, he said there was no longer any waiting period for a family reunification permit. Indeed, under a bill currently before Parliament, the right to family reunification would be considerably strengthened in that it would be extended to holders of short-term residence permits.

66. Concerning procedures for the reception of asylum-seekers at airports, he said interpretation was provided to ensure that they understood the questions put to them and the decision taken in their case. They were also provided with a list of lawyers who would undertake to represent them on request. Women seeking asylum on grounds of sexual persecution would have their applications heard by specially trained women officers. It was true that at present private persecution was not accepted as a ground for granting refugee status under the Asylum Act, but that situation was currently being reviewed.

67. In reply to the question on procedures in administrative detention centres, he said that the law required that detention should be in appropriate premises, and that persons subject to expulsion orders should be held separately from persons in pre-trial detention or serving sentences.

68. Mr. MATTLI (Switzerland), in reply to Mr Klein, said that in fact a working group in the Federal Aliens Office was currently studying the issue of Switzerland's reservation to article 7 of the Convention on the Rights of the Child, with a view to facilitating the granting of nationality to stateless children. It was expected that Switzerland would shortly be in a position to withdraw that reservation. As to the question of ratification of the Optional Protocol to the Covenant, the Government would await the outcome of a referendum the following year on whether it should become a member of the United Nations.

69. In reply to the question on the grant of conscientious objector status, the grounds accepted were religious convictions, ethical, moral and humanitarian considerations, and political and social arguments based on reason and logic. Each applicant was required to submit a dossier to an admissions committee, which would decide whether the reasons advanced were well-founded and would make its recommendation to the civilian service authority. An amendment to the Civilian Service Act had been tabled, shortening the duration of alternative civilian service from 1.5 to 1.3 times the length of military service. Lastly, ritual slaughter was still prohibited by law.

70. Mr. ARNOLD (Switzerland), replying to Mr Klein, said that holders of an F permit were allowed to remain in Switzerland for an interim period. During that period they were not allowed to travel to neighbouring countries, except for family reasons or in emergencies.

71. Mr. KOLLER (Switzerland) said that his country's authorities believed that the system it had in place, although slow, was designed to enhance the protection of human rights. The new Constitution represented a comprehensive legal instrument which could more readily be invoked by those who considered their rights had been infringed. Year by year, progress was being made towards eliminating any disparities between Switzerland's legislation and the international instruments it had signed.

72. The CHAIRPERSON, concluding the dialogue between the Committee and the delegation, thanked the latter for the detailed replies it had given. The Committee appreciated the fact that the report had been submitted on time and that a supplementary report had also been provided.

73. There was no doubt that great advances had been made since the submission of Switzerland's previous report. However, the Committee was concerned that reservations to the Covenant were still maintained, notably to article 26, and was glad to hear that consideration was being given to their withdrawal. While the legal explanations of Switzerland's federal structure were appreciated, it seemed that in practice that that structure still led to problems in enforcing Covenant rights in all cantons. Concern had also been expressed as to police treatment of detainees, especially members of minority groups, and at the way complaints were addressed. Asylum procedures, and the system of forcible deportation adopted in some cases, were also matters of concern.

74. While the steps taken to combat incitement to racism and racial discrimination were commendable, the Committee felt that further measures could be pursued, particularly in the light of the large number of foreigners in the country. Likewise, while the strides made towards improving the situation of women in Swiss society were appreciated, it was hoped that the next report would show further progress.

75. The delegation had stated that rights under article 27 of the Covenant were protected by the equality clause in the Swiss Constitution. However, articles 2 and 26 contained much wider equality provisions, which should also be reflected in the Constitution.

76. Mr. KOLLER (Switzerland) said his country would do all it could to act on the Committee's comments in order to ensure that it continued to make progress in the protection of Covenant rights.

The meeting rose at 6 p.m.